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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

12 TIA ANDERSON, individually, and on
13 behalf of all others similarly situated,

14 Plaintiff,

VS.

17 DRIVETIME CAR SALES, INC., an
18 Arizona corporation; DT CREDIT
19 CORPORATION, an Arizona
20 corporation; DRIVETIME SALES
21 AND FINANCE CO., a business entity
22 form unknown; DRIVETIME
23 AUTOMOTIVE GROUP, a business
entity form unknown; and DT
ACCEPTANCE CORPORATION, a
business entity form unknown,

25 Defendants.

Case Number:

CV08-02543 RSWL (AGRx)
CLASS /COLLECTIVE ACTION

COMPLAINT FOR DAMAGES, INJUNCTIVE RELIEF AND RESTITUTION

- (1) Violation of Fair Labor Standards Act, 29 U.S.C. § 201, et seq. (Unpaid Overtime);
 - (2) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
 - (3) Violation of California Labor Code §§ 226.7 and 512(a) (Denial of Meal and Rest Periods);
 - (4) Violation of California Labor Code § 226(a) (Improper Wage Statements);
 - (5) Violation of California Labor Code §§ 201 and 202 (Wages not Paid Upon Termination);

(6) Violation of California Labor Code § 204 (Failure to Pay Wages);

(7) Violation of California Business & Professions Code §§ 17200, et seq.

DEMAND FOR JURY TRIAL

Representative Plaintiff, individually and on behalf of all other members of the public similarly situated, alleges as follows:

PRELIMINARY STATEMENT

1. This is a class and collective action, seeking unpaid wages, including unpaid overtime compensation and interest thereon, compensation for missed meal and rest periods, waiting time penalties, liquidated damages and other penalties, injunctive and other equitable relief and reasonable attorneys' fees and costs, under, *inter alia*, Rule 23 of the Federal Rules of Civil Procedure and the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq. ("FLSA").

2. Representative Plaintiff brings this action on behalf of herself and other persons similarly situated (hereinafter referred to collectively as the “Class Members”) who are, or have been, employed by the Defendants as an “Account Representative” and other positions with similar titles, positions and/or duties within the applicable statutory periods.

3. Plaintiff reserves the right to establish sub-classes as appropriate.

4. The "FLSA Class" period is designated as the time from April 16, 2005 to the date of final judgment, based upon the allegation that the violations of the FLSA, as described more fully below, have been ongoing since at least this date.

5. The "UCL Class" period is designated as the time from April 16, 2004 through the date of final judgment, based upon the allegation that the nationwide violations of California's wage and hour laws, as described more fully below, have

1 | been ongoing since that time.

2 6. The “California Class” period is designated as the time from April 16,
3 2004 through the date of final judgment, based upon the allegation that the
4 violations of California's wage and hour laws, as described more fully below, have
5 been ongoing since that time.

6 7. During the Class Periods, DRIVETIME CAR SALES, INC., DT
7 CREDIT CORPORATION, DRIVETIME SALES AND FINANCE CO.,
8 DRIVETIME AUTOMOTIVE GROUP, and/or DT ACCEPTANCE
9 CORPORATION (collectively, “Defendants”) have had a consistent policy of: (1)
10 permitting, encouraging, and/or requiring their Class Members, including
11 Representative Plaintiff, to work in excess of forty (40) hours per week and/or eight
12 (8) hours per day without paying them overtime compensation as required by the
13 FLSA and California's wage and hour laws; (2) unlawfully denying the
14 Representative Plaintiff and UCL and California Class Members statutorily
15 mandated meal and rest periods; (3) willfully failing to pay compensation (including
16 unpaid overtime) in a prompt and timely manner to Representative Plaintiff and
17 California Class Members whose employment with Defendants terminated; and (4)
18 willfully failing to provide Representative Plaintiff and California Class Members
19 with accurate semi-monthly itemized wage statements, which, among other things,
20 must provide in writing the inclusive dates of the pay period, all hourly rates, the
21 Social Security number, and the full and correct legal name and address of the
22 employer entity.

INTRODUCTION

24 8. The Fair Labor Standards Act of 1938, as amended, §§ 201, et seq.,
25 provides for minimum standards for both wages and overtime entitlement, and
26 details administrative procedures by which covered work time must be
27 compensated. The enactment of the provisions of the FLSA provided the Federal
28 Courts with substantial authority to stamp out abuses of child labor, equal pay,

1 portal-to-portal activities as well as the overtime pay provisions at issue in this
2 Complaint.

3 9. According to Congressional findings, the existence of labor conditions
4 detrimental to the maintenance of the minimum standard of living engenders unfair
5 commercial competition, labor disputes, barriers to commerce and the free flow of
6 goods in commerce, and interferes with the orderly and fair marketing of goods.

7 10. California's Labor Code and Industrial Welfare Commission Wage
8 Orders provide even more expansive protection to hourly workers, including, but
9 not necessarily limited to, entitlements to overtime pay and work performed beyond
10 eight hours per day and substantial penalties for the denial of rest and meal periods.

11 11. Both Federal and California studies have linked long work hours to
12 increased rates of accident and injury and a loss of family cohesion when either or
13 both parents are kept away from home for extended periods of time, on either a daily
14 or weekly basis.

15 12. Representative Plaintiff is informed and believes and, based thereon,
16 alleges that, within the Class Periods, Defendants have operated numerous facilities
17 throughout the United States. In so doing, Defendants have employed over one
18 hundred individuals in recent years alone in "Account Representative" positions,
19 employment positions which have not, and currently do not, meet any test for
20 exemption from the payment of overtime wages.

21 13. Despite actual knowledge of these facts and legal mandates,
22 Defendants have enjoyed an advantage over their competition and have
23 disadvantaged their workers by electing not to pay premium (overtime) wages,
24 and/or not paying wages for missed meal and rest periods and/or not paying
25 penalties (i.e. "waiting time" penalties) to particular "Account Representatives,"
26 among other employment positions, for all hours worked.

27 14. Representative Plaintiff is informed and believes and, based thereon,
28 alleges that officers of Defendants knew of these facts and legal mandates, yet,

1 nonetheless, repeatedly authorized and/or ratified the violation of the laws cited
 2 herein.

3 15. Despite Defendants' knowledge of the Plaintiff Classes' entitlement to
 4 premium (overtime) pay, and meal and/or rest periods for all applicable work
 5 periods, Defendants failed to provide the same to members of the Plaintiff Classes in
 6 violation of the FLSA and California state statutes, Industrial Welfare Commission
 7 Orders and Title 8 of the California Code of Regulations. This action is brought to
 8 redress and end this long-time pattern of unlawful conduct.

JURISDICTION AND VENUE

9 16. This Court has jurisdiction of this action pursuant to the provisions of
 10 the Fair Labor Standards Act of 1938 ("FLSA"), 29 U.S.C. §§ 201, et seq.,
 11 including under 29 U.S.C. §§ 207, 216, and 217. This Court also has jurisdiction in
 12 light of the existence of a controversy arising under the laws of the United States (28
 13 U.S.C. § 1331), diversity jurisdiction under 28 U.S.C. § 1332, and supplemental
 14 jurisdiction to consider claims arising under California state law, pursuant to 28
 15 U.S.C. § 1367.

16 17. Venue as to Defendants is proper in this judicial district, pursuant to 28
 17 U.S.C. § 1391. Defendants maintain offices in the Central District of California –
 18 Western Division and transact business, have agents, and are otherwise within this
 19 Court's jurisdiction for purposes of service of process. The unlawful acts alleged
 20 herein have a direct effect on Representative Plaintiff and those similarly situated
 21 within the State of California and within this judicial district. Defendants operate
 22 said facilities and have employed numerous Class Members in this judicial district
 23 as well as throughout the State of California and the United States of America.

PLAINTIFF

24 18. Representative Plaintiff TIA ANDERSON is a natural person and was,
 25 during the relevant time period identified herein, employed by Defendants in their
 26 Los Angeles office and at other places as an "Account Representative" pursuant to a

series of successive written compensation plans.

19. In said position, the Representative Plaintiff was repeatedly paid a substandard wage in so far as she was denied full pay for all hours worked, including overtime pay, and was frequently permitted to work, and did work during the class periods, shifts exceeding four hours or a major fraction thereof (of at least three and one-half hours) without being afforded ten minute rest periods and without being afforded mandatory meal periods. The Representative Plaintiff is informed and believes, and based thereon, alleges that this conduct of Defendants is/was commonplace at every location owned and operated thereby.

10 20. As used throughout this Complaint, the terms “Class Members” and/or
11 “Plaintiff Classes” refer to the Representative Plaintiff herein as well as each and
12 every person eligible for membership in the Plaintiff Classes, as further described
13 and defined below.

14 21. At all times herein relevant, the Representative Plaintiff was, and now
15 is, a person within each of the Classes of persons further described and defined
16 herein.

DEFENDANTS

18 22. Defendant DRIVETIME CAR SALES, INC., was and is, upon
19 information and belief, an Arizona corporation, and at all times hereinafter
20 mentioned, an employer whose employees are engaged throughout this county, the
21 State of California, or the various states of the United States of America.

22 23. Defendant DT CREDIT CORPORATION, was and is, upon
23 information and belief, an Arizona corporation, and at all times hereinafter
24 mentioned, an employer whose employees are engaged throughout this county, the
25 State of California, or the various states of the United States of America.

26 24. Defendant DRIVETIME SALES AND FINANCE CO. was and is,
27 upon information and belief, a business entity form unknown, and at all times
28 hereinafter mentioned, an employer whose employees are engaged throughout this

1 county, the State of California, or the various states of the United States of America.

2 25. Defendant DRIVETIME AUTOMOTIVE GROUP was and is, upon
3 information and belief, a business entity form unknown, and at all times hereinafter
4 mentioned, an employer whose employees are engaged throughout this county, the
5 State of California, or the various states of the United States of America.

6 26. Defendant DT ACCEPTANCE CORPORATION was and is, upon
7 information and belief, a business entity form unknown, and at all times hereinafter
8 mentioned, an employer whose employees are engaged throughout this county, the
9 State of California, or the various states of the United States of America.

10 27. At all times herein mentioned, Defendants, and each of them, ratified
11 each and every act or omission complained of herein. At all times herein
12 mentioned, Defendants, and each of them, aided and abetted the acts and omissions
13 of each and all the other Defendants in proximately causing the damages herein
14 alleged.

15 28. Plaintiff is informed and believes, and thereon alleges, that each of said
16 Defendants is in some manner intentionally, negligently, or otherwise responsible
17 for the acts, omissions, occurrences, and transactions alleged herein.

18 29. Each Defendant acted in all respects pertinent to this action as the agent
19 of the other Defendants and carried out a joint scheme, business plan and policy in
20 all respects pertinent thereto, and the acts of each Defendant are legally attributable
21 to the other Defendants.

22 30. Representative Plaintiff is informed and believes and, on that basis,
23 alleges that Defendants have, and do, directly and/or indirectly employed and/or
24 exercised control over the wages, hours and working conditions of the
25 Representative Plaintiff and the Class Members.

CLASS ACTION ALLEGATIONS

27 31. Representative Plaintiff brings this action individually and as a class
28 action on behalf of all persons similarly situated and proximately damaged by

1 Defendants' conduct, including, but not necessarily limited to, the following

2 Plaintiff Classes:

3

4 **FLSA Class:** All persons who worked as Account Representatives or
5 held similar titles or performed similar duties throughout the United
6 States for Defendants at anytime between April 16, 2005 to the date of
7 final judgment.

8

9 **UCL National Class:** All persons who worked as Account
10 Representatives or held similar titles or performed similar duties
11 throughout the United States for Defendants at anytime between April
12 16, 2004 to the date of final judgment.

13

14 **California Class:** All persons who worked as Account
15 Representatives or held similar titles or performed similar duties
16 throughout California for Defendants at anytime between April 16,
17 2004 to the date of final judgment.

18

19 32. Defendants, their officers and directors, are excluded from each of
20 these Plaintiff Classes.

21

22 33. This action has been brought and may properly be maintained as a
23 class/collective action under FRCP, Rule 23 and 29 U.S.C. § 216 because there is a
24 well-defined community of interest in the litigation and the proposed Plaintiff
25 Classes are easily ascertainable.

26

27 a. **Numerosity:** A class action is the only available method for the fair
28 and efficient adjudication of this controversy. The members of the
29 classes are so numerous that joinder of all members is impractical, if
30 not impossible, insofar as Representative Plaintiff is informed and

1 believes and, on that basis, alleges that the total number of class
2 members in each Plaintiff Class exceeds hundreds of individuals.
3 Membership in the Plaintiff Classes will be determined upon analysis
4 of, *inter alia*, employee and payroll records maintained by Defendants.

- 5 b. Commonality: The Representative Plaintiff and the Class Members
6 share a community of interests in that there are numerous common
7 questions and issues of fact and law which predominate over any
8 questions and issues solely affecting individual members, thereby
9 making a class or collective action superior to other available methods
10 for the fair and efficient adjudication of the controversy. Consequently,
11 class certification is proper under FRCP, Rule 23(b)(3) and 29 U.S.C. §
12 216(b). These common questions include, but are not necessarily
13 limited to:
- 14 i. Whether Defendants violated and continue to violate, the FLSA
15 and/or California laws by failing to pay overtime compensation
16 to FLSA Class Members who worked in excess of 40 hours per
17 week;
- 18 ii. Whether Defendants violated and continue to violate, California
19 Wage Order Nos. 7-98, 7-2000, 7-2001 and Labor Code § 510 by
20 failing to pay overtime compensation to UCL and California
21 Class Members who worked in excess of 40 hours per week
22 and/or eight (8) hours a day;
- 23 iii. Whether Defendants violated and continue to violate, California
24 Business and Professions Code §§ 17200, et seq., by failing to
25 pay overtime compensation to UCL and California Class
26 Members who worked in excess of forty (40) hours per week
27 and/or eight (8) hours a day;
- 28 iv. Whether Defendants violated, and continue to violate, California

Labor Code §§ 226.7 and/or 512 by failing to consistently provide meal and/or rest periods to the UCL and/or California Class Members;

- v. Whether Defendants violated, and continue to violate, California Labor Code §§ 201 and 202 by failing to pay all wages due and owing at the time California Class Members' employment with Defendants terminated;
 - vi. Whether the Representative Plaintiff and the California Class Members are entitled to "waiting time" penalties/wages pursuant to California Labor Code § 203;
 - vii. Whether Defendants violated, and continue to violate, California Labor Code § 226 by failing to provide semi-monthly itemized wage statements to California Class Members, which, among other things, must include in writing the inclusive dates of the pay period, all hourly rates, the Social Security number, and the full and correct legal name and address of the employer entity; and,
 - viii. Whether Defendants violated, and continue to violate, California Labor Code § 204 by failing to timely pay wages due and owing to Plaintiff and California Class Members.

c. Typicality: The Representative Plaintiff's claims are typical of the claims of the Plaintiff Classes. The Representative Plaintiff and all members of the Plaintiff Classes sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of state and federal law, as alleged herein.

d. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes, or

1 may make it, impractical for Class Members to seek redress
2 individually for the wrongful conduct alleged herein. Should separate
3 actions be brought or be required to be brought by each individual
4 Class Member, the resulting multiplicity of lawsuits would cause undue
5 hardship and expense for the Court and the litigants. The prosecution
6 of separate actions would also create a risk of inconsistent rulings,
7 which might be dispositive of the interests of other Class Members who
8 are not parties to the adjudications and/or may substantially impede
9 their ability to adequately protect their interests. Moreover, the
10 Representative Plaintiff is informed and believes, and based thereon
11 alleges, that Defendants, in refusing to pay overtime to the FLSA Class
12 Members and the UCL and California Class Members, have acted and
13 refused to act on grounds generally applicable to all claims, thereby
14 making appropriate injunctive and monetary relief for all members of
15 each class. Consequently, class certification is proper under FRCP,
16 Rule 23(b)(2) and 29 U.S.C. § 216(b).

17 e. Adequacy of Representation: The Representative Plaintiff in this class
18 action is an adequate representative of the Plaintiff Classes, in that the
19 Representative Plaintiff's claims are typical of those of the Plaintiff
20 Classes; and the Representative Plaintiff has the same interests in the
21 litigation of this case as the Class Members. The Representative
22 Plaintiff is committed to vigorous prosecution of this case and has
23 retained competent counsel, experienced in litigation of this nature.
24 The Representative Plaintiff is not subject to any individual defenses
25 unique from those conceivably applicable to the Class as a whole. The
26 Representative Plaintiff anticipates no management difficulties in this
27 litigation.

28 \\

COMMON FACTUAL ALLEGATIONS

34. As described herein, Defendants have, for years, knowingly failed to adequately compensate those Class Members within the class definitions identified above for premium (overtime) wages due under the FLSA (29 U.S.C. §§ 206 and 207), California Labor Code § 510 and applicable California Wage Orders. Moreover, Defendants have knowingly failed to provide said workers with mandatory meal and rest periods, thereby enjoying a significant competitive edge over other companies. Among other means, Defendants engaged in unlawful business practices requiring Class Members to work numerous hours of overtime on a daily and/or weekly basis and prevented Class Members from taking rest and meal periods.

35. Representative Plaintiff and the California Class Members were, and are, unlawfully denied meal period and rest periods required by law.

36. Moreover, California Labor Code §§ 201 and 202 require Defendants to pay all wages due to members of the California Class immediately upon discharge. California Labor Code § 203 provides that, if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced, for a period not to exceed 30 days.

37. More than 30 days have passed since Representative Plaintiff and certain California Class Members have left Defendants' employ.

38. As a consequence of Defendants' willful conduct in not paying compensation for all hours worked, certain California Class Members are entitled to 30 days wages as penalty under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

39. Furthermore, Defendants violated California Labor Code § 1174(d) by failing to provide or require the use, maintenance or submission of time records by members of the California Class. Defendants also failed to provide Representative

1 Plaintiff and members of the California Class with accurate semi-monthly itemized
2 wage statements, which must, among other things, provide in writing the inclusive
3 dates of the pay period, all hourly rates, the Social Security number, and the full and
4 correct legal name and address of the employer entity, in violation of California
5 Labor Code § 226. In so doing, Defendants have not only failed to pay their
6 workers the full amount of compensation due, they have, until now, effectively
7 shielded themselves from their employees' scrutiny for their unlawful conduct by
8 concealing the magnitude (the full number of hours worked) and financial impact of
9 their wrongdoing.

10

11 **FIRST CAUSE OF ACTION**

12

**UNLAWFUL FAILURE TO PAY OVERTIME WAGES
(FLSA Class)**

14

40. Representative Plaintiff incorporates in this cause of action each and
15 every allegation of the preceding paragraphs, with the same force and effect as
16 though fully set forth herein.

17

41. At all relevant times hereto, Defendants employed FLSA Class
18 Members and engaged them in commerce, as defined under 29 U.S.C. §§ 203(b),
19 (e), (g) and 29 U.S.C. § 207(a)(1). At all times relevant hereto, Defendants have
20 been an "enterprise engaged in commerce or in the production of goods for
21 commerce," as defined under 29 U.S.C. §203(s)(1).

22

42. Representative Plaintiff is informed and believes, and thereon alleges,
23 that Defendants have required, or requires, the FLSA Class Members as part of their
24 employment to work without additional compensation, such as overtime, in excess
25 of the forty hours per week maximum under 29 U.S.C. § 207(a)(1). That section
26 provides the following:

27

Except as otherwise provided in this section, no employer shall
28 employ any of his employees . . . for a workweek longer than forty

hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate which is not less than one and one-half times the regular rate at which he is employed.

43. Indeed, in the performance of their duties for Defendants, members of the FLSA Class often did work over forty hours per week, yet did not receive overtime compensation for the work, labor and services they provided to Defendants, as required by the FLSA, 29 U.S.C. §§ 206 and 207. The precise number of unpaid overtime hours will be proven at trial.

44. Representative Plaintiff proposes to undertake appropriate proceedings to have such FLSA Class Members aggrieved by Defendants' unlawful conduct notified of the pendency of this action and join this action as plaintiffs, pursuant to 29 U.S.C. § 216(b), by filing written consents to join with the Court.

45. Defendants' violations of the FLSA were willful.

46. As a result of the foregoing, Representative Plaintiff seeks judgment against Defendants on her own behalf, and on behalf of those FLSA Class Members similarly situated who file written consents to join in this action, for all unpaid wages, including overtime wages owed by Defendants to the Representative Plaintiff and the FLSA Class, pursuant to 29 U.S.C. §§ 206 and 207 together with an award of an additional equal amount as liquidated damages, and costs, interest, and reasonable attorneys' fees, as provided for under 29 U.S.C. § 216(b).

SECOND CAUSE OF ACTION

**UNLAWFUL FAILURE TO PAY OVERTIME WAGES
(UCL and California Class)**

47. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

1 48. During the Class Period, Representative Plaintiff and the UCL and
2 California Class Members worked in excess of eight (8) hours in a workday and/or
3 forty (40) hours in a workweek. The precise number of overtime hours will be
4 proven at trial.

5 49. During said time period, Defendants refused to compensate
6 Representative Plaintiff and the UCL and California Class Members for some and/or
7 all of the overtime wages earned in violation of applicable Wage Order(s) and the
8 provisions of the California Labor Code.

9 50. At all relevant times, Defendants were aware of, and were under a duty
10 to comply with, the overtime provisions of the California Labor Code, including, but
11 not limited to, the following:

- 12 a. Labor Code § 510: “Any work in excess of eight hours in one
13 workday and any work in excess of 40 hours in anyone workweek
14 and the first eight hours worked on the seventh day of work in
15 anyone workweek shall be compensated at the rate of no less than
16 one and one-halftimes the regular rate of pay for an employee . . .”
- 17 b. Labor Code § 1194: “Notwithstanding any agreement to work for a
18 lesser wage, any employee receiving less than the legal minimum
19 wage or the legal overtime compensation applicable to the employee
20 is entitled to recover in a civil action the unpaid balance of the full
21 amount of this minimum wage or overtime compensation, including
22 interest thereon, reasonable attorney's fees, and costs of suit.”
- 23 c. Labor Code § 1198: “[t]he maximum hours of work and the
24 standard conditions of labor fixed by the commission shall be the
25 maximum hours of work and the standard conditions of labor for
26 employees. The employment of any employee for longer hours than
27 those fixed by the order or under conditions of labor prohibited by
28 the order is unlawful.”

51. By refusing to compensate Representative Plaintiff and the UCL and
2 California Class Members for overtime wages earned, Defendants willfully violated
3 those California Labor Code provisions cited herein, as well as various Industrial
4 Welfare Commission Wage Orders.

52. As a direct and proximate result of Defendants' unlawful conduct, as set
forth herein, Representative Plaintiff and the UCL and California Class Members
have sustained damages, including loss of earnings for hours of overtime worked on
behalf of Defendants, in an amount to be established at trial, and are entitled to
recover attorneys' fees and costs of suit.

53. Representative Plaintiff is informed and believes that Defendants are guilty of oppression, fraud, or malice, thereby warranting an award of punitive damages against Defendants for the sake of example, and to punish Defendants and deter others from engaging in similar misconduct.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL AND REST PERIODS (UCL and California Class)

18 54. Representative Plaintiff incorporates in this cause of action each and
19 every allegation of the preceding paragraphs, with the same force and effect as
20 though fully set forth herein.

21 55. At all relevant times, Defendants were aware of, and were under a duty
22 to comply with California Labor Code § 512 and California Labor Code § 226.7.

23 California Labor Code § 512 provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and

1 employee. An employer may not employ an employee for a work
2 period of more than 10 hours per day without providing the employee
3 with a second meal period of not less than 30 minutes, except that if
4 the total hours worked is no more than 12 hours, the second meal
5 period may be waived by mutual consent of the employer and the
6 employee only if the first meal period was not waived.

7 Moreover, California Labor Code § 226.7 provides:

8 (a) No employer shall require any employee to work during any meal
9 or rest period mandated by an applicable order of the Industrial
10 Welfare Commission.

11 (b) If an employer fails to provide an employee a meal period or rest
12 period in accordance with an applicable order of the Industrial
13 Welfare Commission, the employer shall pay the employee one
14 additional hour of pay at the employee's regular rate of compensation
15 for each work day that the meal or rest period is not provided.

16 56. Industrial Wage Commission Wage Order Nos. 7-2001(11) and (12)
17 also mandate that employers provide all applicable meal and/or rest periods to their
18 workers.

19 IWC Wage Order No. 7-2001(11) provides:

20 (A) No employer shall employ any person for a work period of more
21 than five (5) hours without a meal period of not less than 30
22 minutes . . .

23 (B) An employer may not employ an employee for a work period of
24 more than ten (10) hours per day without providing the employee
25 with a second meal period of not less than 30 minutes . . .

26 (D) If an employer fails to provide an employee a meal period in
27 accordance with the applicable provisions of this order, the employer
28 shall pay the employee one (1) hour of pay at the employee's regular

rate of compensation for each workday that the meal period is not provided.

57. IWC Wage Order No. 7-2001 (12) provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof . . .

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

14 58. By failing to consistently provide meal and rest periods to
15 Representative Plaintiff and the UCL and California Class Members, Defendants
16 violated these California Labor Code and IWC Wage Order provisions.

17 59. As a direct and proximate result of Defendants' unlawful conduct, as set
18 forth herein, Representative Plaintiff and the UCL and California Class Members
19 have sustained damages, including lost wages, and are entitled to recover such
20 damages and attorneys' fees and costs under California law, in an amount to be
21 established at trial.

22 60. Representative Plaintiff is informed and believes that Defendants are
23 guilty of oppression, fraud, or malice, thereby warranting an award of punitive
24 damages against Defendants for the sake of example, and to punish Defendants and
25 deter others from engaging in similar misconduct.

26 //

27 | V

28 //

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(California Class)

61. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

California Labor Code § 226(a) provides:

Each employer shall semimonthly, or at the time of each payment of wages, furnish each of his or her employees either as a detachable part of the check, draft or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized wage statement in writing showing: (1) gross wages earned; (2) total number of hours worked by each employee whose compensation is based on an hourly wage; (3) all deductions; provided, that all deductions made on written orders of the employee may be aggregated and shown as one item; (4) net wages earned; (5) the inclusive date of the period for which the employee is paid; (6) the name of the employee and his or her social security number; and (7) the name and address of the legal entity which is the employer.

62. The IWC Wage Orders also establish this requirement in § 7(B) thereof (8 Cal. Code Regs. §§ 11010 et seq.).

63. Moreover, California Labor Code § 226(e) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000),

1 and is entitled to an award of costs and reasonable attorney's fees.

2 64. Finally, California Labor Code § 1174 provides:

3 Every person employing labor in this state shall: (d) Keep, at a central
4 location in the state . . . payroll records showing the hours worked daily
5 by and the wages paid to . . . employees . . . These records shall be kept
6 in accordance with rules established for this purpose by the
7 commission, but in any case shall be kept on file for not less than two
8 years.

9 65. Representative Plaintiff seeks to recover actual damages, costs and
10 attorneys' fees under these provisions on behalf of herself and the California Class
11 Members.

12 66. Defendants failed to provide timely, accurate itemized wage statements
13 to Representative Plaintiff and the California Class Members in accordance with
14 Labor Code § 226(a) and the IWC Wage Orders. The violations include, without
15 limitation, the failure to provide the inclusive dates of the pay period, the failure to
16 provide all hourly rates, the failure to provide Social Security numbers, and the
17 failure to provide the full and correct legal name and address of the employer entity.
18 As a direct and proximate result of Defendants' unlawful conduct, as set forth
19 herein, Representative Plaintiff and the California Class Members have sustained
20 damages in an amount to be established at trial, and are entitled to recover attorneys'
21 fees and costs of suit.

22
23 **FIFTH CAUSE OF ACTION**

24
25 **FAILURE TO PAY WAGES ON TERMINATION**
(California Class)

26 67. Representative Plaintiff incorporates in this cause of action each and
27 every allegation of the preceding paragraphs, with the same force and effect as
28 though fully set forth herein.

1 68. California Labor Code § 203 provides that:

2 "If an employer willfully fails to pay, without abatement or reduction,
3 in accordance with Sections 201, 201.5, 202, and 205.5, any wages of
4 an employee who is discharged or who quits, the wages of the
5 employee shall continue as a penalty from the due date thereof at the
6 same rate until paid or until an action therefore is commenced; but the
7 wages shall not continue for more than 30 days."

8 69. Representative Plaintiff and certain California Class Members were
9 employed by Defendants during the class period and were thereafter terminated or
10 resigned from their positions, yet they were not paid all wages due upon said
11 termination or within seventy-two (72) hours of said resignation of employment
12 therefrom. Said non-payment was the direct and proximate result of a willful
13 refusal to do so by Defendants.

14 70. More than thirty days has elapsed since Representative Plaintiff and the
15 California Class Members were terminated and/or resigned from Defendants'
16 employ.

17 71. As a direct and proximate result of Defendants' willful conduct in
18 failing to pay said California Class Members for all hours worked, Representative
19 Plaintiff and certain California Class Members are entitled to recover "waiting time"
20 penalties for unpaid wages over thirty days, pursuant to Labor Code § 203, in an
21 amount to be established at trial, together with interest thereon and attorneys' fees
22 and costs.

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SIXTH CAUSE OF ACTION

Violation of California Labor Code § 204 (UCL and California Class)

4 72. Representative Plaintiff incorporates in this cause of action each and
5 every allegation of the preceding paragraphs, with the same force and effect as
6 though fully set forth herein.

7 73. California Labor Code § 204 provides that all wages earned by any
8 person in any employment between the 1st and the 15th days, inclusive, of any
9 calendar month, other than those wages due upon termination of an employee, are
10 due and payable between the 16th and the 26th day of the month during which the
11 labor was performed.

74. California Labor Code § 204 provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

16 75. California Labor Code § 204 provides that all wages earned for labor in
17 excess of the normal work period shall be paid no later than the payday for the next
18 regular payroll period.

19 76. During the relevant time period, Defendants willfully failed to pay
20 Plaintiff and the UCL and California Class Members the regular and overtime wages
21 due to them, within any time period permissible by California Labor Code § 204.

22 77. Plaintiff is informed and believes that Defendants are guilty of
23 oppression, fraud, or malice, thereby warranting an award of punitive damages
24 against Defendants for the sake of example, and to punish Defendants and deter
25 others from engaging in similar misconduct.

26 | //

27 | //

28 //

SEVENTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES
(UCL and California Class)

78. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

7 79. Representative Plaintiff further brings this cause of action seeking
8 equitable and statutory relief to stop the misconduct of Defendants, as complained
9 of herein, and to seek restitution from Defendants of amounts acquired through the
10 unfair, unlawful and fraudulent business practices described herein.

11 80. The knowing conduct of Defendants, as alleged herein, constitutes an
12 unlawful and/or fraudulent business practice, as set forth in California Business &
13 Professions Code §§ 17200 et seq. Specifically, Defendants conducted business
14 activities while failing to comply with the legal mandates cited herein.

15 81. Defendants' knowing failure to adopt policies in accordance with
16 and/or to adhere to these laws, all of which are binding upon and burdensome to
17 Defendants' competitors, engenders an unfair competitive advantage for Defendants,
18 thereby constituting an unfair business practice, as set forth in California Business &
19 Professions Code §§ 17200 et seq.

20 82. Defendants have clearly established a policy of accepting a certain
21 amount of collateral damage, as represented by the damages to Representative
22 Plaintiff and the UCL and California Class Members herein alleged, as incidental to
23 its business operations, rather than accept the alternative costs of full compliance
24 with fair, lawful and honest business practices ordinarily borne by responsible
25 competitors of Defendants and as set forth in legislation and the judicial record.

26 | V

27 | V

28 | V

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, and on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

Collective Action

- 8 1. Designation of the first cause of action as a collective action on
9 behalf of the FLSA Class (asserting FLSA claims) and prompt issuance of notice
10 pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA Class,
11 apprising them of the pendency of this action, and permitting them to assert timely
12 FLSA claims in this action by filing individual Consent to Join forms pursuant to 29
13 U.S.C. § 216(b);

- 14 || 2. Designation of Plaintiff as a Representative of the FLSA Class.

Class Certification

- 16 3. That this action be certified as a class action;
17 4. That Plaintiff be appointed as the representative of the UCL Class and
18 the California Class; and
19 5. That counsel for Plaintiff be appointed as Class Counsel.

As to the First Cause of Action

- 21 6. That the Court declare, adjudge and decree that (a) the Representative
22 Plaintiff and the FLSA Class Members were at all times relevant hereto, and are,
23 entitled to be paid overtime for work beyond 40 hours in a week; and (b) the
24 amounts to which Representative Plaintiff and the FLSA Class Members are entitled
25 is to be doubled as liquidated damages and awarded thereto;

- 26 7. An award of damages, according to proof, including liquidated
27 damages, to be paid by Defendants;

- 8 Costs of action incurred herein, including expert fees:

- 1 9. For reasonable attorneys' fees, including fees pursuant to 29 U.S.C. §
- 2 216;
- 3 10. Pre-judgment and post-judgment interest as provided by law; and
- 4 11. For such other and further relief as the Court may deem equitable and
- 5 appropriate.

6 As to the Second Cause of Action

- 7 12. That the Court declare, adjudge and decree that Defendants violated
- 8 California Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by
- 9 willfully failing to pay all overtime wages due to California Class Members and the
- 10 UCL Class Members;
- 11 13. For general unpaid wages at overtime wage rates and such general and
- 12 special damages as may be appropriate;
- 13 14. For pre-judgment interest on any unpaid overtime compensation
- 14 commencing from the date such amounts were due;
- 15 15. For punitive and/or exemplary damages according to proof at trial;
- 16 16. For reasonable attorneys' fees and for costs of suit incurred herein
- 17 pursuant to California Labor Code § 1194(a); and
- 18 17. For such other and further relief as the Court may deem equitable and
- 19 appropriate.

20 As to the Third Cause of Action

- 21 18. That the Court declare, adjudge and decree that Defendants violated
- 22 California Labor Code §§ 226.7 and 512 and applicable IWC Wage Orders by
- 23 willfully failing to provide meal periods (including second meal periods) and/or rest
- 24 periods to California Class Members and the UCL Class Members;
- 25 19. That the Court make an award to the Representative Plaintiff and the
- 26 UCL and California Class of one (1) hour of pay at each employee's regular rate of
- 27 compensation for each workday that a meal period was not provided;
- 28 20. That the Court make an award to the Representative Plaintiff and the

1 California Class of one (1) hour of pay at each employee's regular rate of
2 compensation for each workday that a rest period was not provided;

3 21. For all actual, consequential, and incidental losses and damages,
4 according to proof;

5 | 22. For wages pursuant to California Labor Code § 226.7(b);

6 23. For punitive and/or exemplary damages according to proof at trial;

7 24. For reasonable attorneys' fees and costs of suit incurred herein; and

8 25. For such other and further relief as the Court may deem equitable and
9 appropriate.

As to the Fourth Cause of Action

11 26. That the Court declare, adjudge and decree that Defendants violated the
12 record keeping provisions of California Labor Code §§ 226(a) and 1174(d) and
13 section 7 of the Wage Orders as to Representative Plaintiff and the California Class,
14 and willfully failed to provide accurate semi-monthly itemized wage statements
15 thereto;

16 27. For all actual, consequential and incidental losses and damages,
17 according to proof;

18 | 28. For statutory penalties pursuant to California Labor Code § 226(e);

19 29. For injunctive relief to ensure compliance with this section, pursuant to
20 California Labor Code § 226(g);

21 30. For reasonable attorneys' fees and costs of suit incurred herein pursuant
22 to California Labor Code § 226(e); and

23 31. For such other and further relief as the Court may deem equitable and
24 appropriate.

As to the Fifth Cause of Action

32. That the Court declare, adjudge and decree that Defendants violated
California Labor Code §§ 201, 202, and 203 by willfully failing to pay all
compensation owed at the time of the termination of the employment of

1 | Representative Plaintiff and other terminated California Class Members;

2 33. For all actual, consequential and incidental losses and damages,
3 according to proof;

4 34. For statutory penalties pursuant to California Labor Code § 203 for
5 Plaintiff and all other class members who have left Defendants' employ;

6 35. For reasonable attorneys' fees and for costs of suit incurred herein; and

7 36. For such other and further relief as the Court may deem equitable and
8 appropriate.

As to the Sixth Cause of Action

10 37. That the Court declare, adjudge and decree that Defendants violated
11 California Labor Code § 204 by willfully failing to pay all compensation owed, at
12 the time required by Labor Code § 204, to Representative Plaintiff and UCL and
13 California Class Members;

14 38. For all actual, consequential and incidental losses and damages,
15 according to proof;

16 39. For statutory penalties pursuant to California Labor Code § 204 for
17 Plaintiff and all other class members;

18 40. For pre-judgment interest on any untimely paid compensation, from the
19 date such amounts were due;

20 41. For punitive and/or exemplary damages according to proof at trial;

21 42. For reasonable attorneys' fees and costs of suit incurred herein; and

22 43. For such other and further relief as the Court may deem equitable and
23 appropriate.

As to the Seventh Cause of Action

25 44. That the Court declare, adjudge and decree that Defendants violated
26 California Business and Professions Code §§ 17200, et seq. by failing to pay
27 Representative Plaintiff and all Class Members overtime compensation, failing to
28 provide UCL and California Class Members meal and/or rest periods, failing to pay

1 for missed meal and/or rest periods to said employees, and/or failing to pay UCL
2 and California Class Members' wages timely as required by Labor Code §§ 201
3 through 204;

4 45. For restitution of unpaid wages to Plaintiff and all Class Members and
5 prejudgment interest from the day such amounts were due and payable;

6 46. For the appointment of a receiver to receive, manage and distribute any
7 and all funds disgorged from Defendants and determined to have been wrongfully
8 acquired by Defendants as a result of violations of California Business &
9 Professions Code § 17200, et seq.;

10 47. For reasonable attorneys' fees and costs of suit incurred herein that
11 Plaintiff and other class members are entitled to recover under California Code of
12 Civil Procedure § 1021.5;

13 48. For injunctive relief to ensure compliance with this section, pursuant to
14 California Business & Professions Code § 17200, et seq.; and

15 49. For such other and further relief as the Court may deem equitable and
16 appropriate.

17
18 Dated: April 17, 2008

Respectfully submitted,
Initiative Legal Group LLP

19
20 By: 

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26
27
28
Mark Yablonovich
Marc Primo
Joseph Cho
Attorneys for Plaintiff

JURY DEMAND

Representative Plaintiff and the Plaintiff Classes hereby demand trial by jury on all issues triable of right by jury.

Dated: April 17, 2008

Respectfully submitted,
Initiative Legal Group LLP

By:

Mark Yablonovich

Marc Primo

Joseph Cho

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Ronald S. W. Lew and the assigned discovery Magistrate Judge is Alicia G. Rosenberg.

The case number on all documents filed with the Court should read as follows:

CV08- 2543 RSWL (AGRx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====
NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

COPY

M. Yablonovich (186670); Marc Primo (216796)
 Joseph Cho (198844)
 INITIATIVE LEGAL GROUP LLP
 1800 Century Park East, 2nd Floor
 Los Angeles, California 90067
 Telephone: (310) 556-5637

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TIA ANDERSON, individually, and on
 behalf of all others similarly situated,

v.

PLAINTIFF(S)

CASE NUMBER

CV08-02543 RSWL (AGRx)

DRIVETIME CAR SALES, INC., an Arizona corporation; DT CREDIT CORPORATION, an Arizona corporation; DRIVETIME SALES AND FINANCE CO., a business entity form unknown; DRIVETIME AUTOMOTIVE GROUP, a business entity form unknown; and DT ACCEPTANCE CORPORATION, a business entity form unknown,

DEFENDANT(S).

SUMMONS

TO: DEFENDANT(S): _____

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Joseph Cho, whose address is Initiative Legal Group LLP, 1800 Century Park East, 2nd Floor, Los Angeles, CA 90067. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

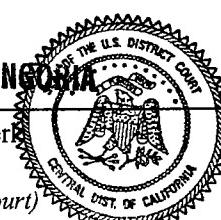
Dated: APR 17 2008

By: _____

NATALIE LONGORIA

Deputy Clerk

(Seal of the Court)



1198

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3).]

Conformed  

~~EDSTAT~~ DISTRICT COURT, CENTRAL DISTRICT CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? No Yes

If yes, list case number(s):

FOR OFFICE USE ONLY: Case Number:

CV08-02543

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? No Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: List the California County, or State if other than California, in which **EACH** named plaintiff resides (Use an additional sheet if necessary)

Check here if the U.S. government, its agencies or employees is a named plaintiff.
 Los Angeles

List the California County, or State if other than California, in which **EACH** named defendant resides. (Use an additional sheet if necessary).

Check here if the U.S. government, its agencies or employees is a named defendant.
 Arizona

List the California County, or State if other than California, in which **EACH** claim arose. (Use an additional sheet if necessary)

Note: In land condemnation cases, use the location of the tract of land involved.
 Los Angeles

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____

Date April 17, 2008

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))